

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.626 OF 2024

ARJUN
VITTHAL
KUDHEKAR

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Date: 2025.02.26
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Dharamchand Chaturbhuj Sevak

...Applicant

Versus

Rajni Ramakant Saharkar (Since deceased)

...Respondents

1.1 Rajesh Ramakant Saharkar & Ors.

Mr. Durgaprasad Sabnis a/w Purva Autade, for the Applicant.

Ms. Anjali Helekar, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATED: 20 FEBRUARY 2025

P.C.:

1. Heard Mr. Sabnis, learned Counsel for the Applicant and Ms. Helekar, learned Counsel for the Respondents.
2. The challenge in the present Civil Revision Application is to the legality and validity of the Judgment and Decree dated 4th October 2024 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in Appeal No.20 of 2024 as well as to the Order dated 7th March 2024 passed by the learned Judge of the Small Causes Court at Mumbai in RAE Suit No.185 of 2017.
3. By the impugned Orders, the learned Trial Court as well as the learned Appellate Court have concurrently held that the Plaintiffs i.e. present Respondents have proved that the Defendant No.1 has illegally

sublet the suit premises to the Defendant No.2 and that the Plaintiffs require suit premises reasonably and bonafide. It has also been that greater hardship will be caused to the Plaintiffs if the decree of eviction is refused.

4. As far as subletting is concerned, the evidence on record shows that Defendant No.2 was occupying the suit premises and Defendant No.2 has vacated the suit premises after the issuance of notice by the Plaintiffs to the Defendants. The material on record clearly shows that the Defendant No.1 has sublet the suit premises to the Defendant No.2. Both the Courts have concurrently found that the Defendant No.1 has illegally sublet the suit premises to the Defendant No.2. Accordingly, no interference is warranted in the said concurrent finding recorded by the learned Trial Court as confirmed by the learned Appellate Court as regards decree passed on the ground of the subletting is concerned.

5. As far as the ground of reasonable and bonafide requirement is concerned, it the contention of Mr. Sabnis, learned Counsel for the Applicant that the issue regarding the said ground was not framed earlier and the same was framed after the entire evidence is recorded. It is his submission that therefore opportunity to cross examine the Plaintiffs' witnesses and also to lead the evidence has not been given to the present Applicant i.e. Defendant.

6. Perusal of the record shows that the said issue has not been

framed earlier. However, it is required to be noted that the said issue was framed by passing detailed Order. The said additional issues were framed on 2nd March 2024 regarding the bonafide requirement and greater hardship. It appears that, while framing the said issues, detailed Order has been passed on 2nd March 2024.

7. It is very significant note that on 16th February 2024 i.e. before framing of the said additional issues, the Defendant has filed *pursis*, stating that the Defendant has closed the evidence and Defendant does not want to re-examine any witness. It is further significant to note that on 2nd March 2024 i.e. after framing of the additional issues, the Plaintiff filed *pursis*, stating that the Plaintiff has already led evidence on the issue of bonafide requirement and therefore does not want to lead any additional evidence. On the very day i.e. 2nd March 2024, even the Defendant also filed *pursis* stating that the Defendants also do not want to lead any evidence. It is also significant to note that the Defendant has not contended that the Defendants wants to further cross-examine witnesses of the Plaintiffs.

8. Both the Courts have concurrently held that the evidence on record shows that the Plaintiff's family is expanding. The Plaintiff has three children, one of the son is to be married very soon and therefore the suit premises are required for bonafide use. As both the Courts have found that the Defendant No.1 has in fact sublet the suit premises to

Defendant No.2, the question of hardship itself becomes irrelevant. In any case, both the Courts have concurrently found that the Plaintiff will suffer greater hardship if the decree of eviction is refused. Accordingly, there is no ground to interfere in the impugned decrees even as regards ground of bonafide requirement.

9. For the above reasons, the Civil Revision Application is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]